

Federal Communications Commission

FCC 99-55

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
1998 Biennial Regulatory Review --)	MM Docket No. 98-93
Streamlining of Radio Technical Rules in)	
Parts 73 and 74 of the Commission's Rules)	

FIRST REPORT AND ORDER

Adopted: March 23, 1999

Released: March 30, 1999

By the Commission:

1. By this *First Report and Order*, the Commission modifies its rules to extend first come/first served processing to applications for minor changes to AM, reserved frequency noncommercial educational FM ("NCE FM") and FM translator facilities. We also expand the definition of "minor change" in these services to conform more closely to the commercial FM definition, which includes all changes except changes in community of license and certain changes in frequency and/or class. Finally, we amend the contingent application rule to permit the filing of up to four related and simultaneously-filed FM station construction permit applications. These modifications were proposed as part of a broad-based initiative, undertaken in conjunction with the Commission's 1998 biennial regulatory review, to streamline Mass Media Bureau radio technical rules.¹ After careful review of the comments filed in this proceeding, we are persuaded that these measures will encourage licensees and permittees to propose service improvements by making the AM, commercial FM, NCE FM and FM translator application processes simpler, faster and more efficient.

¹ See 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rule Making in MM Docket No. 98-93, 13 FCC Rcd 14849, 14850-51 (1998) ("Notice"). The Commission will act on the other proposals set forth in the Notice in a forthcoming Report and Order. We are adopting the subject proposals now in order to expedite the benefits to the public of the new procedures adopted herein, particularly with regard to AM and FM translator major change applications that will be reclassified as minor changes under the new rules. See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Notice of Proposed Rule Making in MM Docket No. 97-234, 12 FCC Rcd 22363, 22388 (1997).

**I. EXTENDING FIRST COME/FIRST SERVED PROCESSING TO AM, NCE FM AND FM
TRANSLATOR MINOR CHANGE APPLICATIONS; REVISING THE DEFINITION OF
"MINOR" CHANGE IN THESE SERVICES**

A. BACKGROUND

2. *Proposed Rule Changes.* Under the first come/first served processing system now used for minor change applications for commercial FM broadcast stations, the filing of a first acceptable application "cuts off" the filing rights of subsequent, conflicting applicants.² Under our present rules, however, minor change applications for AM, NCE FM and FM translator stations remain subject to mutually exclusive proposals until the staff disposes of the applications.³ As we explained in the *Notice*, this policy exposes minor change applicants in these services to significant uncertainty and delay: at any time during the pendency of an application, a mutually exclusive proposal may be filed that could halt further processing of the application and necessitate a technical amendment, settlement between the applicants, or designation of the applications for comparative hearing to eliminate the mutual exclusivity.⁴ The prospect of expending significant resources to prosecute an application without any certainty of grant may substantially deter applicants from seeking to improve service. Therefore, we proposed in the *Notice* to extend first come/first served processing to AM, NCE FM and

² 47 C.F.R. § 73.3573(f)(1); see *Amendment of Sections 73.3572 and 73.3573 Relating to the Processing of FM and TV Broadcast Applications, Report and Order* in MM Docket No. 84-750, 50 Fed. Reg. 19936, 19941-42; *recon. den.*, 50 Fed. Reg. 43157 (1985); see also *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application, Report and Order* in MM Docket No. 92-159, 8 FCC Rcd 4735, 4738-39 (1993) (minor change applications protected against subsequently-filed, conflicting rulemaking petitions). The term "conflicting" refers to applications that cannot both be granted without creating impermissible interference. Conflicting applications are "mutually exclusive" or "competing" if they meet applicable criteria entitling them to equal priority: mutually exclusive applications cannot be disposed of except by elimination of the mutual exclusivity through technical amendment, settlement between the applicants, auction or other means. See *infra*, n. 4 and accompanying text. Under the first come/first served processing system, mutual exclusivity between minor change applications arises only where conflicting minor change applications are filed on the same day. See 47 C.F.R. § 73.3573(f)(1).

³ 47 C.F.R. §§ 73.3571 (Processing of AM broadcast station applications), 73.3573 (NCE FM), and 74.1233 (FM translators).

⁴ See *Notice of Proposed Rule Making* in MM Docket No. 97-234, 12 FCC Rcd 22363, 22364-67 (1997), regarding problems with the traditional comparative broadcast hearing process. The Commission concluded in the *First Report and Order* in MM Docket No. 97-234, 13 FCC Rcd 15920, 15928-30 (1998), that mutually exclusive minor change applications in the commercial radio broadcast services will not be subject to auction procedures and that reserved NCE FM frequencies are statutorily exempted from auction procedures. Parties with mutually exclusive minor change applications are expected to use engineering solutions and negotiations to resolve the mutual exclusivities. *Id.* at 15989-90. The Commission presently is considering the possibility of using a lottery or point system to select among mutually exclusive NCE FM new and major change applicants. *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Further Notice of Proposed Rule Making* in MM Docket No. 95-31, FCC 98-269 (released October 21, 1998).

FM translator minor change applications.⁵

3. Our current rules also treat proposed facilities changes in the different radio services inconsistently. In the commercial FM service, only proposed changes in community of license and changes to a non-adjacent or non-intermediate frequency channel are defined as major changes.⁶ In the other radio services, however, the following changes are so defined: (1) for AM stations, most proposed increases in power, as well as any changes in frequency, hours of operation and community of license; (2) for NCE FM stations, changes in power, antenna location and/or antenna height above average terrain that would result in a change of 50 percent or more in the station's predicted 1 mV/m (60 dBu) coverage area, as well as any changes in frequency and community of license; and (3) for FM translators, changes in area to be served greater than 10 percent of the authorized 1 mV/m coverage area and changes in frequency.⁷ With the exception of proposed changes in community of license and certain channel changes, these "major" changes are fundamentally technical and minor in nature: review of them is primarily an engineering function, and they do not have a significant preclusionary impact on other potential radio spectrum uses. Accordingly, we tentatively concluded in the *Notice* that the additional administrative procedures imposed as a result of their "major change" classification under the current rules are unnecessarily burdensome.⁸ We proposed to expand the definitions of minor change for the AM, NCE FM and FM translator services to conform more closely to the commercial FM definition.⁹ To prevent NCE FM and FM translator stations from abandoning their present service areas, however, we proposed to limit "minor changes" in these services to proposals that would continue to provide 1 mV/m service to some portion of the stations' presently authorized 1 mV/m service areas.¹⁰

⁵ *Notice*, 13 FCC Rcd at 14870.

⁶ 47 C.F.R. § 73.3573(a)(1). Adjacent channels include the three channels above and the three channels below the existing channel. Intermediate frequency channels are channels that are 10.6 or 10.8 MHz (53 or 54 channels) apart in frequency. *See Review of Technical Parameters For FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations, Third Report and Order* in MM Docket No. 86-144, 4 FCC Rcd 3557 (1989).

⁷ *See* 47 C.F.R. §§ 73.3571(a)(1), 73.3573(a)(1), 74.1233. Section 73.3571 establishes an exception where the AM station's radiation levels in all directions remain the same due to a reduction of antenna efficiency. *Id.* at § 73.3571(a)(1). A proposal by a Class D AM station to increase nighttime power up to 250 watts (and 141 mV/m at 1 kilometer equivalent) is treated as a minor change. *Id.* FM translators, as a secondary service, may seek community of license changes by filing minor change applications. *Id.* at § 74.1233(a)(1); *see infra*, n. 23.

⁸ *See Notice*, 13 FCC Rcd at 14871-72. Unlike minor changes, major change applications are subject to a number of statutory requirements. These include providing both a thirty-day public notice period following the acceptance of a major change application and the opportunity to file petitions to deny and mutually exclusive applications within this thirty-day period. *See* 47 U.S.C. § 309(b); 47 C.F.R. §§ 73.3573(e), 73.3580.

⁹ *Notice*, 13 FCC Rcd at 14872.

¹⁰ *Id.* at 14872.

4. *Overview of Comments.* The comments filed in response to the subject proposals were overwhelmingly favorable, with all of the respondents favoring some form of the proposals. Thirteen commenters support the Commission's proposal to extend cut-off protection to AM and NCE FM minor change applications, and eleven support the proposal with regard to FM translator minor change applications.¹¹ The fourteen respondents that addressed the Commission's proposal to expand the minor change definition in the AM, NCE FM and FM translator services also favor the proposal, although several do not support it with regard to all three services.¹² The commenters generally agree with the description of the public interest benefits in the *Notice*. Several commenters suggest that we also treat proposed community of license changes in the AM, NCE FM and FM translator services as minor changes, pointing out that the Commission's rules permit commercial FM licensees or permittees to seek community of license changes without facing mutually exclusive or competing applications under certain circumstances.¹³

5. Four commenters express concern that the new procedures could facilitate abuses by applicants, and several suggest additional safeguards in order to prevent "warehousing" of spectrum.¹⁴

¹¹ See comments and reply comments filed by V-Soft Communications, Sound of Life, Inc., West Virginia Radio Corporation, du Treil Lundin & Rackley, Inc., Hardy & Carey, Communications Technologies, Inc., National Public Radio, Inc. ("NPR"), the Association of Federal Communications Consulting Engineers, Hatfield & Dawson Consulting Engineers, LLC ("Hatfield & Dawson"), Educational Information Corporation ("EIC"), Radio Property Ventures, South Central Communications Corporation and Press Communications, LLC. Hatfield & Dawson and EIC argue that the first come/first served processing system should not be extended to the FM translator service because it is a secondary service. In reply, NPR contends that cut-off protection is appropriate despite the FM translator service's secondary status, and particularly important for NCE FM translators, because the Commission currently lacks standards to resolve mutually exclusive NCE FM applications. See *supra*, n. 4.

¹² See comments and reply comments filed by National Association of Broadcasters, Sound of Life, Inc., Radio Property Ventures, Communications Technologies, Inc., V-Soft Communications, Fuller-Jeffrey Broadcasting Companies, Inc., NPR, Mullaney Engineering, Inc., Graham Brock, Inc., South Central Communications Corporation, West Virginia Radio Corporation ("WVRC") (supporting proposal with regard to AM only), Hardy & Carey (AM and FM translator only), EIC (NCE FM only) and Press Communications, LLC. WVRC and EIC do not explain their reasons for not supporting this proposal with regard to all three services. Hardy & Carey's objection to expanding the NCE FM minor change definition is discussed *infra*, ¶¶ 5 and 9. None of the comments specifically addressed our proposal to limit minor changes in the NCE FM and FM translator services to proposals that would continue to provide 1 mV/m service to some portion of the stations' presently authorized 1 mV/m service areas. See *infra*, ¶ 8.

¹³ See comments filed by West Virginia Radio Corporation (AM only), Communications Technologies, Inc. (AM only) and Radio Property Ventures; 47 C.F.R. § 1.420(i); *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License* in MM Docket 88-526, 4 FCC Rcd 4870 (1989) ("New Community of License R&O"); see also *infra*, ¶ 9.

¹⁴ See comments filed by Hardy & Carey, NPR, EIC and V-Soft Communications. The Commission's rules and policies are intended to encourage the timely construction and prompt initiation of service by new and modified broadcast facilities. See *Construction of Broadcast Stations*, 102 FCC 2d 1054, 1057 (1985). Permittees who do not demonstrate a willingness to construct their authorized facilities are, in effect,

For example, NPR worries that the new procedures "may encourage a few broadcasters with extensive resources to flood the Commission with minor change applications immediately after the conclusion of this proceeding, regardless of whether they have plans to modify their facilities. This in turn could limit the ability of stations with actual upgrade plans to make necessary modifications when they need to do so." NPR suggests that we delay implementation of the new procedures for six months, in order to allow stations to assess their future needs and provide a meaningful opportunity to file for facility improvements under the first come/first served procedures. Hardy & Carey opposes expansion of the NCE FM minor change definition, arguing that many NCE FM licensees lack the resources or sophistication to monitor spectrum availability and "need time to arrange financing and obtain institutional approval to file an application." It is also concerned that licensees with multiple authorizations could take unfair advantage of the new procedures by filing minor change applications immediately after surrendering other authorizations, before the issuance of public notice alerts other parties to the availability of spectrum. V-Soft Communications suggests strict application of construction permit extension rules to address warehousing concerns, and EIC recommends that we take a "hard look" at applicants' financial ability to implement proposed modifications.

B. DISCUSSION

6. After careful review of the record in this proceeding, and in light of our experience in administering the commercial FM application process, we conclude that our AM, NCE FM, and FM translator application processing rules should be amended as proposed in the *Notice*. Accordingly, we will extend first come/first served processing to AM, NCE FM and FM translator minor change applications. Furthermore, we will expand the definition of "minor change" for these services to conform more closely to the commercial FM definition. Under the modified rules we are adopting, non-expanded band AM, NCE FM and FM translator licensees or permittees will be able to propose changing their frequencies to adjacent channels, and for FM translators to intermediate frequencies ("IF"), by filing minor change applications.¹⁵ Proposed changes in power, antenna height and/or antenna location for stations in these services (including expanded band stations) also will be classified as minor changes, provided that NCE FM and FM translator stations proposing antenna location changes would continue to provide 1 mV/m service to some portion of their authorized 1 mV/m service areas.¹⁶ In addition, AM stations will be able to propose changes in authorized hours of operation by filing minor change applications.¹⁷ Proposed AM and NCE FM facility changes that would result in station class changes will be classified as minor changes provided that they meet the

"warehousing" spectrum, which precludes service by other potential broadcasters and, therefore, disserves the public interest. *See id.*

¹⁵ First, second and third adjacent channels will be considered "adjacent." Two FM stations are IF-related when their assigned frequencies are 10.6 or 10.8 MHz (53 or 54 channels) apart in frequency. *See supra*, n. 6.

¹⁶ *See infra*, ¶ 8.

¹⁷ Proposals by AM stations to add nighttime service will be classified as minor changes.

above-stated standards. Amendments to applications also will be classified as minor in accordance with these standards.

7. We recognize, as a general matter, the benefits of a processing policy that facilitates the filing of mutually exclusive or competing applications,¹⁸ and that these modifications will limit the opportunities for such filings. Nevertheless, we believe that the public interest weighs in favor of the measures we are adopting. The current policy of not providing cut-off protection to minor change applications in the AM, NCE FM and FM translator services exposes applicants to significant uncertainty, expense and delay, and may substantially deter applicants from seeking to improve service. The current broad classification of proposed technical facility changes as "major changes" in these services imposes on applicants administrative burdens and delays that we believe are unnecessary in light of the technical and minor nature of many such proposals. The measures that we are adopting here have made the commercial FM application process simpler, faster and more efficient, without undermining the administration of any Commission rule or policy. We anticipate that they will prove to be similarly beneficial in the AM, NCE FM and FM translator services, thereby encouraging potential applicants to file for improved facilities and speeding the introduction of improved services to the public.¹⁹

8. *Continuity of Service Requirement.* We believe it is necessary to impose a continuity of service requirement on both NCE FM and FM translator stations proposing facility modifications. Unlike commercial AM and FM stations,²⁰ our rules have not required NCE FM and FM translator stations to provide any level of service to their communities of license. Our approach here provides NCE FM and FM translator stations with maximum flexibility in proposing facility changes, while preventing them from completely abandoning their present service areas. We anticipate that this restriction rarely will come into play, because stations have a disincentive to abandon existing service areas with established audiences; instead, they are to likely to propose service increases as a result of the rule changes we are adopting. Mid-size and large NCE FM stations also are unlikely to be able to propose substantial coverage changes due to contour protection requirements, TV Channel 6 protection requirements and other limitations. In practice, therefore, only FM translators and small, Class A NCE FM stations are likely to be able to propose antenna location changes that approach the limit of this restriction. In such cases, the potential preclusive impact of a proposed change is limited by the small service area of the station involved, and we believe that our minor change application processing

¹⁸ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd at 4873, citing *Cheyenne, Wyoming*, 62 FCC 2d 63 (1976).

¹⁹ We concur with NPR that application of these measures to FM translators is appropriate: the secondary status of this service does not diminish the material improvement these measures will bring to the FM translator application process. See *supra*, n. 11.

²⁰ See *supra*, ¶ 6. No such requirement is necessary for commercial FM and AM stations because these stations presently are required to maintain 3.16 mV/m and 5 mV/m contours, respectively, over their communities of license. See 47 C.F.R. §§ 73.24(i), 73.315(a).

procedures provide adequate safeguards for public participation.²¹ We note, however, that our proposal in the *Notice* to require NCE FM stations to maintain 1 mV/m contours over at least a portion of their communities of license would impose an additional restriction on NCE FM station antenna location changes.²² As an interim measure until the Commission acts on that proposal, we shall process proposed NCE FM antenna location changes as minor changes only if the proposed changes do not diminish the stations' present 1 mV/m service to their communities of license.

9. *AM and NCE FM Community of License Changes.* We decline to adopt the suggestion of several commenters that we treat community of license changes in the AM and NCE FM services as minor changes.²³ Unlike the proposed technical facility changes that we are reclassifying as minor changes, proposed AM or NCE FM community of license changes are not fundamentally technical in nature; rather, they raise important statutory and policy issues under Section 307(b) of the Communications Act, issues that require substantive legal analysis.²⁴ As the commenters have pointed out, there is a procedure by which commercial FM licensees and permittees may request a new community of license without being subject to mutually exclusive proposals.²⁵ Such requests are not processed as minor change applications, however. Rather, this procedure takes place in the context of rule making proceedings to amend the FM table of allotments, and it ensures that proposed community of license changes receive the consideration warranted by their significance under Section 307(b).²⁶ Given the important statutory and policy issues raised by proposed community of license changes, we conclude that it would be inappropriate to reclassify them as minor changes for AM and NCE FM stations.

²¹ As discussed in the *Notice*, the Commission provides public notice of the tendering of minor change applications and the public has the opportunity to file informal objections and seek reconsideration of staff actions. See *Notice*, 13 FCC Rcd at 14871; 47 U.S.C. § 405; 47 C.F.R. §§ 1.106, 73.3564, 73.3587.

²² See *Notice*, 13 FCC Rcd at 14875-76.

²³ See *supra*, n. 13 and accompanying text. As mentioned earlier, FM translators, as a secondary service, are exempted from local service obligations and, therefore, may request community of license changes as minor changes. 47 C.F.R. § 74.1233; see *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Report and Order* in MM Docket No. 88-140, 5 FCC Rcd 7212, 7220 (1990).

²⁴ See 47 U.S.C. § 307(b) (obligating Commission to license broadcast facilities in a fair, efficient, and equitable manner). Under this statutory provision, the association of a broadcast station with a community of license is a basic tenet of the Commission's allocation scheme for broadcast stations.

²⁵ 47 C.F.R. § 1.420(i).

²⁶ *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd at 4873. In order to amend an allotment using this procedure, the Commission compares the proposed allotment plan to the existing state of allotments for the communities involved, applying FM allotment standards in order to determine whether adoption of the proposed allotment plan would result in a preferential distribution of radio services among the affected communities.

10. *"Warehousing" concerns.* With regard to the spectrum "warehousing" concerns expressed by some commenters, we are not persuaded that additional safeguards are necessary. The commenters' stated fears of widespread warehousing and other abuses have not come to pass in the commercial FM service, notwithstanding size and resource disparities among broadcasters.²⁷ Mechanisms for preventing abuse will continue to exist under the new rules, in the form of careful staff review of applications, the opportunity to file informal objections and seek reconsideration and review of staff actions, and strict time limits on authorized construction periods.²⁸ In addition, the enhancements that an applicant may request are necessarily limited by the operation of stations on adjacent and co-channels in neighboring communities and city grade coverage requirements.²⁹ Furthermore, we do not believe that the new rules will operate to the unfair advantage of certain broadcasters. These are mature services and many licensees have had opportunities to evaluate and file applications for enhanced facilities. As we observed in the *Notice*, prospective applicants have the ability to predict whether other area stations have the potential to seek facilities improvements based on applicable contour protection requirements, and to file first for enhanced facilities.³⁰ Potential applicants in the AM, NCE FM and FM translator services have been on notice concerning these proposals since the release of the *Notice* approximately six months ago and, therefore, have had ample opportunity to assess the availability of spectrum, their foreseeable needs and other factors that may enter into preparing and/or filing applications for improved facilities. We see no reason why this notice and opportunity should not prove sufficient to protect the expansion plans of broadcasters in these services.³¹

²⁷ Cf. *Applications of Temple University*, FCC 98-128 at ¶ 12 (released June 29, 1998) ("public interest goals of furthering the prompt construction of broadcast facilities within a reasonable time frame and providing incentives for permittees to inaugurate new service as quickly as possible" apply equally to commercial FM and NCE FM stations), *quoting Golden Eagle*, 6 FCC Rcd 5127, 5129 (1991).

²⁸ See 47 U.S.C. §§ 1.106, 73.3564, 73.3587; 1998 Biennial Regulatory Review -- *Streamlining of Mass Media Applications, Rules and Processes, Report and Order* in MM Docket No. 98-43, 13 FCC Rcd ____ at ¶¶ 77-90 (released November 25, 1998) (modifying construction permit extension procedures); *see also Matter of Revision of Sections 73.3571, 73.3572 and 73.3573 of the Commission's Rules, First Report and Order* in MM Docket No. 83-1377, 56 Rad. Reg. 2d 941, 943-44 (1984) (employing similar analysis in classifying commercial FM station facilities increases as minor changes).

²⁹ See 47 C.F.R. §§ 73.37(a) (AM daytime contour protection requirements); 73.182(q) (AM nighttime contour protection requirements); 73.509 (NCE FM stations must protect 1 mV/m contour of NCE FM stations); 74.1204 (FM translators must protect primary service contours of existing FM and FM translator stations).

³⁰ *Notice*, 13 FCC Rcd at 14872; *see supra*, n. 29.

³¹ With regard to NPR's and V-Soft Communications' suggestions regarding strict application of construction permit extension rules to address warehousing concerns, we note that the Commission recently adopted modified construction permit extension procedures lengthening the time period for construction and imposing strict criteria for tolling the new extended construction period. *See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Report and Order* in MM Docket 98-43, 94-149, FCC 98-281 at ¶¶ 77-90 (released November 25, 1998).

II. AGREEMENTS INVOLVING APPLICATIONS FOR COORDINATED FM STATION CHANGES

A. BACKGROUND

11. *Proposed Rule Changes.* Section 73.3517 of the Commission's rules prohibits the filing of contingent new station and modification applications in the broadcast services.³² The Commission first announced this policy in a 1961 Public Notice³³ and subsequently codified the restriction.³⁴ It was adopted to bring greater administrative orderliness to the broadcast licensing process. The Commission found that it was frequently holding applications in pending status that were contingent on the grant of other applications involved in lengthy hearings.³⁵ An application is "contingent" when it cannot be granted unless and until a second application, also pending before the Commission, is granted. In the FM service, Section 73.208 requires an applicant to protect all outstanding construction permits and licenses.³⁶ Thus, when an FM application is contingent on the effectuation of a second station's facility modification application, in most instances the first station must wait for the grant of the second station's covering license application before filing a construction permit application. This rule effectively requires stations to undertake "coordinated" facility improvements through a series of application and construction cycles, a risky, lengthy and sometimes infeasible procedure, particularly where a station downgrade or facility relocation is required to permit expanded service by a second station.

12. In the *Notice* we proposed to permit on a limited basis the filing of contingent applications.³⁷ Specifically, we proposed to amend the rules to allow parties to submit up to four "related"³⁸ minor change FM construction permit applications, including one-step upgrade and downgrade applications. We asked whether a different number of applications should be permitted where stations are under common ownership. With regard to NCE FM stations, we noted some

³² 47 C.F.R. § 73.3517. This section applies to all Part 73 broadcast services. Section 74.780 of the rules prohibits the filing of contingent TV translator, low power television and television booster stations. 47 C.F.R. § 74.780.

³³ *Public Notice*, FCC 61-1286, 22 RR 299 (1961).

³⁴ *Amendment of Section 1.517 and 1.520 of the Commission's Rules, Report and Order*, 61 FCC 2d 238 (1976).

³⁵ "The volume of contingent applications, the long time they were on file, and their relationship to other pending applications all served to create a substantial administrative problem." *Selma Television, Inc.*, 29 FCC 2d 522, 525 n.5 (1971).

³⁶ 47 C.F.R. § 73.208.

³⁷ *See Notice*, 13 FCC Rcd at 14856.

³⁸ *See infra*, n. 43.

concern about coordinated facility changes that would result in the loss of a community's only NCE FM transmission service. Nevertheless, we tentatively proposed to permit such proposals, provided no gray or white area would be created.³⁹ We also asked for comment on whether to establish additional NCE FM local service floor requirements. We proposed to grant proposals that meet these criteria and are otherwise in the public interest. Stations seeking to take advantage of these new procedures would be required to file all applications on the same day and include in each application a copy of the agreement that references all related applications. Applications would be processed as a group and granted simultaneously. If any of the applications is unacceptable, the entire group of applications would be dismissed.

13. *Overview of Comments.* Most commenters strongly support increased flexibility for coordinated FM station facility improvements.⁴⁰ Several commenters favor permitting groups of more than four related applications.⁴¹ Reynolds proposes that applicants be given a 30-day period to cure application defects, arguing that the "harsh" dismissal procedure proposed in the *Notice* could generate greenmail opportunities by subsequently-filed blocking applications. The Rutherford Group, Inc., licensee of WGNS(AM), Rutherford, Tennessee ("WGNS"), requests that stand-alone AM stations be permitted to use FM translators to improve service in their communities of license. One commenter, D. Michael Self Broadcasting ("Self"), argues that permitting contingent applications could thwart the objectives of Section 307(b) of the Communications Act.⁴² This would occur, contends Self, where contingent service improvements are authorized that would block mutually exclusive and Section 307(b)-preferred proposals. No commenter opposes the proposal to permit the cancellation of NCE FM licenses. However, NPR urges the Commission to carefully consider all proposed service reductions, including changes in public radio service levels. NPR also supports the *Notice* proposal to prohibit NCE FM license cancellations that would create white or gray areas. du Treil requests that we make clear that a white/gray area analysis in this context should consider only NCE FM services. Reynolds argues that alternative signal propagation models should be permitted to determine whether a proposal would create gray or white areas.

³⁹ A "white" area receives no full-time aural service, a "gray" area receives one full-time aural service.

⁴⁰ See comments and reply comments of the Association of Federal Communications Consulting Engineers ("AFCCE"), NAB, du Treil Lundin & Rackley, Inc. ("du Treil"), Graham Brock, Inc. ("Graham Brock"), Communications Technologies, Inc. ("CTI"), Reynolds Technical Associates, Fuller-Jeffrey Broadcasting Companies, Inc., West Virginia Radio Corporation ("WVRC"), Big River Broadcasting Corporation, The Rutherford Group, Inc., Hardy & Carey and NPR.

⁴¹ See comments of CTI, WVRC, and Graham Brock and reply comments of Reynolds.

⁴² 47 U.S.C. § 307(b) (mandating that "the Commission shall make such distribution of licenses . . . among the several states and communities as to provide for a fair, efficient and equitable distribution of radio service. . . .").

B. DISCUSSION

14. We continue to believe that certain revisions to our contingent application rule are warranted and that the proposal set forth in the *Notice* strikes a proper balance between the desire of broadcasters for additional flexibility and the limited staff resources that are available to review the substantially more complex facilities change applications that these rule changes will permit. Based on the record developed in this proceeding, we shall adopt rule changes to permit applicants to file up to four related,⁴³ simultaneously-filed and cross-referenced minor change FM station construction permit applications.⁴⁴ We believe that it is prudent to limit the scope of these new procedures, both to limit the potential for significant service losses and/or disruptions and to ensure that there is sufficient staff to complete review of interrelated proposals expeditiously. Thus, we exclude major change applications. Proposals may include one-step upgrade and downgrade applications.⁴⁵ Applicants will be required to submit a copy of the agreement to undertake the coordinated facility changes with each application. Applications will be processed together and, if grantable, will be granted simultaneously. Granted applications will contain conditions, as necessary, to prevent interference during the construction period leading to full implementation of all related facility modifications. If one or more applications is unacceptable, all related applications will be dismissed. Thus, the staff will dismiss an otherwise grantable non-contingent "lead" application if a related contingent application is found to be unacceptable.

15. We reject the suggestion that we permit the filing of more than four related applications, even if the stations are under common ownership. We are concerned about the technical complexity of proposals that involve more than four station changes. Furthermore, we believe that the likelihood of an unforeseen event precluding the effectuation of a coordinated facility change increases with the number of interdependent proposals. Accordingly, we also are concerned that significant Commission resources may be expended processing proposals that would never be constructed if we were to permit the filing of more than four related applications.

16. We believe a strict dismissal policy is warranted. The plain *quid pro quo* for creating this greater technical flexibility for broadcasters is that applicants bear sole responsibility for developing

⁴³ Two applications are "related" if the grant of one is necessary to permit the grant of the second application. Thus, the "lead" application in a group typically will not be "contingent" on any other application but nevertheless will be counted as a "related" application.

⁴⁴ We adopt no change in our current policy of not accepting any application filed "contingent" on the grant of a license application to cover an outstanding permit of another station.

⁴⁵ We take this opportunity to correct the erroneous statement in the *Notice* that when a one-step FM construction permit application is granted, the formerly-authorized facilities are no longer protected from subsequently filed applications. See *Notice*, 13 FCC Rcd at 14855, n. 22. Piedmont Broadcasting Corporation correctly notes that when a one-step application is granted to downgrade an existing FM authorization to a lower class, the Commission will continue to protect the authorized facilities until the modified facilities are licensed. See *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413, 2415 (1989).

proposals that fully comply with the Commission's rules. However, we wish to correct Reynolds' erroneous assumption in its comments that applicants would be prohibited from filing curative amendments. Our current commercial and NCE FM amendment procedures will apply to contingent applications.⁴⁶ The one processing policy change is that the staff will dismiss *all* related applications if one application remains unacceptable after the opportunity for filing curative amendments has closed.

17. We find unpersuasive Self's Section 307(b) arguments against this proposal. The Commission has faced similar policy concerns previously.⁴⁷ Then, as now, we recognized the potential benefits of permitting the filing of competing proposals and that a processing rule which limits the opportunity to file mutually exclusive applications is *prima facie* inconsistent with this statutory mandate. Nevertheless, we concluded that the public interest was better served by promoting FM license upgrades and certain FM and TV city of license modifications.⁴⁸ With regard to the contingent application issues discussed in the *Notice*, Section 73.3517 discourages coordinated facility changes that could increase service. Furthermore, permitting contingent applications does not, as a practical matter, deprive potential applicants and/or rulemaking petitioners of *bona fide* filing opportunities. Broadcasters will undertake coordinated facility improvements based on the assumption that *each* of the interrelated modifications can, and will, be built. A potential applicant's "opportunity" to file a competing proposal is premised on the conflicting assumption that these broadcasters would make some but not all of the changes in the facilities improvement package. We conclude that the public interest benefits of a rule change to permit coordinated FM station service improvements outweighs any concern that such improvements may preclude theoretically-favored but unachievable competing service proposals.⁴⁹

18. Finally, with regard to contingent NCE FM applications, we will permit proposals that include station cancellations except those that would create gray or white areas, *i.e.*, areas that receive service from one or no NCE FM stations, respectively. Although we decline to establish other full-time NCE FM service floor guidelines, any proposal to cancel a community's sole NCE FM station license, *i.e.*, its sole transmission service, will be treated as *prima facie* inconsistent with the public interest and must include a public interest justification. We will consider Reynolds' proposal to permit alternative signal propagation methodologies to measure NCE FM service levels in a subsequent order in this proceeding in connection with our evaluation of the supplemental point-to-point ("PTP") signal

⁴⁶ Commercial FM application amendment procedures are set forth at 47 C.F.R. § 73.3564. An NCE FM applicant is given one opportunity to cure all acceptability defects and resubmit its application *nunc pro tunc*. See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, FCC 84-366, 49 Fed.Reg. 47331 (released August 2, 1984).

⁴⁷ See, e.g., *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd at 4870; *Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels*, 60 RR 2d 114 (1986).

⁴⁸ See 47 C.F.R. §§ 1.420(g)(3) and 1.420(i).

⁴⁹ WGNS's FM translator station fill-in proposal, which is outside the scope of this proceeding, also is being separately considered. See *Public Notice*, DA 98-2527 (released December 10, 1998).

propagation model.⁵⁰

III. PROCEDURAL MATTERS AND ORDERING CLAUSES

19. *Effective Date.* The new procedures we are adopting will become effective 30 days after the date of publication of this Order in the Federal Register. We believe that this 30-day period will provide adequate notice and opportunity to potential applicants, while expediting the benefits to the public of the new procedures.

20. In order to ensure a smooth transition to the new procedures, we wish to clarify our procedures for processing applications filed prior to the effective date that are subject to the Order. First, with regard to applications originally filed as minor changes, as of the effective date they will be accorded cut-off protection based on their actual filing dates, provided that they are not mutually exclusive with any other applications filed prior to the effective date. Mutually exclusive applications will be handled under our existing procedures. Second, with regard to major change applications subject to reclassification as minor changes, as of the effective date such applications will be reclassified automatically as minor changes, provided that: (1) they are not mutually exclusive with any other applications filed prior to the effective date; and (2) no petition to deny was filed against them in accordance with the requirements of Section 309(d) of the Communications Act prior to the effective date.⁵¹ Applications that fail to satisfy these two conditions will be handled under our existing application processing procedures.⁵² AM and FM translator applicants with major change applications on file that seek waiver of the Commission's interim policy concerning processing of such applications may request dismissal of their applications and resubmit minor change applications as of

⁵⁰ We note, however, that we proposed in the *Notice* to limit the PTP methodology to certain narrow circumstances. *Notice*, 13 FCC Rcd at 14864-65. Moreover, we tentatively rejected the use of this model to determine the number of available signals for purposes of complying with the multiple ownership requirements of Section 73.3555, a context similar to that which Reynolds proposes here. 47 C.F.R. § 73.3555; see *Notice*, 13 FCC Rcd at 14864-65.

⁵¹ 47 U.S.C. § 309(d); see 47 C.F.R. § 73.3584. Reclassified applications will be accorded cut-off protection as of their actual filing dates. Applicants whose applications are so reclassified may seek refund of the difference between fees paid for major and minor change application processing through the Office of the Managing Director, and will be deemed entitled to such refunds under 47 C.F.R. § 1.1113(a)(4). AM and FM translator major change applicants seeking waiver of the Commission's interim policy concerning processing of such applications will not be reclassified automatically. See *Notice of Proposed Rule Making* in MM Docket No. 97-234, 12 FCC Rcd at 22388; *infra*, n. 53 and accompanying text.

⁵² See 47 C.F.R. §§ 73.3564(d), 73.3571(c), 73.3573(d). For applications in this category that have not achieved cut-off protection, we will announce by public notice "B" cut-off list filing periods for the acceptance of petitions to deny only, and thereafter process them under our existing procedures. We shall not issue any "A" cut-off lists for the acceptance of competing applications, because to do so would be inconsistent with our purpose of reducing unnecessary administrative burdens and delays associated with certain proposed technical facility changes.

the effective date of the Order.⁵³ Finally, applications pending as of the adoption date of the Order and seeking waivers of Section 73.3517 will be considered on a case-by-case basis. Contingent applications filed between the adoption and effective dates of the Order shall be returned.

21. *Paperwork Reduction Act of 1995 Analysis.* The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

22. The Final Regulatory Flexibility Analysis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 604, is contained in Appendix B.

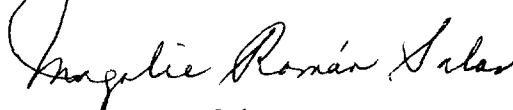
23. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 4(j), 303, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 303, 308 and 309, Sections 73.3517, 73.3571, 73.3573 and 74.1233 of the Commission's rules, 47 C.F.R. §§ 73.3517, 73.3571, 73.3573 and 74.1233, ARE AMENDED as set forth in Appendix C.

24. IT IS FURTHER ORDERED that the rule amendments set forth in Appendix C WILL BECOME EFFECTIVE 30 days after their publication in the *Federal Register*, and the information collection contained in these rules will become effective 30 days after publication in the *Federal Register*, following Office of Management and Budget approval, unless a notice is published in the *Federal Register* stating otherwise.

⁵³ See *Notice of Proposed Rule Making* in MM Docket 97-234, 12 FCC Rcd at 22388 (imposing temporary freeze on the filing of major change applications in all commercial broadcast and secondary broadcast services). Such applicants may seek refund of their application processing fees through the Office of the Managing Director, and will be deemed entitled to such refunds under 47 C.F.R. § 1.1113(a)(4). If any such applications remain pending following the effective date, we will consider the waiver requests and, should they demonstrate compelling grounds for waiver, process the applications in accordance with the above-stated standards. No waivers will be granted on the ground that an application is subject to reclassification as a minor change as of the effective date of the Order.

25. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *First Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Magalie Roman Salas".

Magalie Roman Salas
Secretary

APPENDIX A

**LIST OF COMMENTERS AND REPLY COMMENTERS REGARDING THE SUBJECT
PROPOSALS IN MM DOCKET No. 98-93.**

Commenters:

V-Soft Communications
Sound of Life, Inc.
West Virginia Radio Corporation
du Treil Lundin & Rackley, Inc.
Hardy & Carey
Communications Technologies, Inc.
National Public Radio, Inc.
Association of Federal Communications Consulting Engineers
Hatfield & Dawson Consulting Engineers, LLC
Educational Information Corporation
Radio Property Ventures
South Central Communications Corporation
National Association of Broadcasters
Fuller-Jeffrey Broadcasting Companies, Inc.
Mullaney Engineering, Inc.
Graham Brock, Inc.
Press Communications, LLC
Big River Broadcasting Corporation
Reynolds Technical Associates
Piedmont Broadcasting Corporation
The Rutherford Group, Inc.

Reply Commenters:

National Public Radio, Inc.
Educational Information Corporation
D. Michael Self Broadcasting, Inc.
Reynolds Technical Associates
du Treil Lundin & Rackley

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS (FRFA)

First Report and Order

MM Docket No. 98-93

As required by the Regulatory Flexibility Act ("RFA"),¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Notice of Proposed Rulemaking* for the docket in this proceeding.² The Commission sought written public comments on the proposals set forth in the *Notice*, including comment on the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA")³ in this *First Report and Order* ("Order") conforms to the RFA.⁴

A. Need For and Objectives of the Rule: Specifically, this *Order* 1) amends the Commission's rules to extend first come/first served processing to applications for minor changes to existing AM, NCE FM, and FM translator facilities; 2) expands the definition of minor change in these services to conform more closely to the commercial FM definition of "minor change;" and 3) amends the contingent application rule to permit the filing of up to four related and simultaneously-filed FM station construction permit applications. By this *Order*, the Commission eliminates the present inconsistent treatment of certain proposed facilities changes for AM, NCE FM and FM translator services, and provides greater flexibility for permittees and licensees to propose service improvements.⁵

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFAs: No comments were received specifically in response to the IRFA in MM Docket No. 98-93. However, four commenters expressed concern about an issue that may affect, but is not limited to, small business issues. These commenters were concerned that the new procedures could facilitate

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 et. seq., has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

² *In the Matter of 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking*, in MM Docket 98-93, 13 FCC Rcd 14849 (1998) ("Notice").

³ This FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

⁴ See 5 U.S.C. § 604.

⁵ The Commission will act on the remaining proposals set forth in the *Notice* in a forthcoming *Report and Order*.

abuses by applicants resulting in the warehousing of spectrum.⁶

C. Description and Estimate of the Number of Small Entities to which Rules will Apply:

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term that are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."⁷ We received no comment in response to either IRFA on how to define radio and television broadcast "small businesses." Therefore, we will continue to utilize SBA's definitions for the purpose of this FRFA.

The SBA defines a radio broadcasting station that has no more than \$5 million in annual receipts as a small business.⁸ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁹ Included in this industry are commercial religious, educational, and other radio stations.¹⁰ Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included.¹¹ As of November 30, 1998, Commission records indicate that 12,458 radio stations were operating, of which

⁶ See Comments of Hardy & Carey, National Public Radio, Inc., Educational Information Corporation and V-Soft Communications.

⁷ While we stated in the *Notice* that we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this FRFA, we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to these rules and to consider further the issue of the number of small entities that are radio and television broadcasters or small media entities in the future. See *Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), citing 5 U.S.C. § 601(3).

⁸ 13 C.F.R. § 121.201, SIC 4832.

⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 108, Appendix A-9.

¹⁰ *Id.*

¹¹ *Id.* However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.

11,960 were small businesses.¹² The rules adopted herein are limited to AM, NCE FM and FM translator facilities. Thus, the measures adopted here will affect 9957 such entities, 9559 of which are considered small businesses.¹³

D. Description of Projected Reporting, Recordkeeping and Other Compliance

Requirements: The measures adopted in the *Order* are anticipated to reduce the overall administrative burden of the Commission's application processes on applicants and the Commission. Extending first come/first served processing to AM, NCE FM and FM translator minor change applications will eliminate the uncertainty, delay and expense associated with the indefinite exposure to competing applications that occurs under the current processing system. Expansion of the minor change definition in these services to conform more closely to the commercial FM definition will eliminate unnecessarily burdensome administrative procedures, as well as minimizing the resources expended by applicants and the Commission in resolving conflicts between minor change applications. Permitting applications for coordinated FM station changes will eliminate the need to undertake coordinated improvements through a series of application and construction cycles, a risky, lengthy and sometimes infeasible procedure. No additional professional services are required by applicants filing minor change applications under these revised processing rules. Further, the cost of compliance will not vary between large and small entities.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and

Significant Alternatives Considered: This *Order* sets forth the Commission's new streamlined application processing changes that are intended to eliminate unnecessary administrative burdens and shorten processing time frames for certain applications. All significant alternatives presented in the comments were considered. As noted in the *Order*, we extend the application of first come/first served processing to AM, NCE FM, and FM translator stations. These processing changes will remedy the uncertainty and delay previously associated with AM, NCE FM and FM translator minor change applications. We also expand the definition of minor change for these services to conform more closely to the commercial FM "minor change" definition. This change will eliminate the inconsistent treatment of proposed facility increases for different radio services without undermining the administration of any Commission rule or policy. Finally, this *Order* adopts rule changes to permit applicants to file up to four related, simultaneously-filed and cross-referenced minor change construction permit applications. This change will encourage licensees and permittees to propose service improvements by making the process more efficient.

F. Report to Congress The Commission will send a copy of the *1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*,

¹² FCC News Release "Broadcast Station Totals as of September 30, 1998."

¹³ As of November 30, 1998, there were 3151 FM translators and boosters, 4792 AM stations and 2014 NCE FM stations. See FCC News Release "Broadcast Station Totals as of November 30, 1998." We use the 96 percent figure of radio establishments with less than \$5 million revenue from the census data and apply it to the 9957 AM, NCE FM and FM translator facilities to arrive at 9559 as the total number of small business entities affected by this *Order*.

including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of this *Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order*, including this FRFA, (or summaries thereof) will also be published in the Federal Register. *See* 5 U.S.C. § 604(b).

G. Further, the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

APPENDIX C**I. Part 73 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:**

Section 73.3517 is amended by revising subsection (e) to read as follows:

§ 73.3517 Contingent applications

(e) The Commission will accept up to four contingently related applications filed by FM licensees and/or permittees for minor modification of facilities. Two applications are related if the grant of one is necessary to permit the grant of the second application. Each application must state that it is filed as part of a related group of applications to make changes in facilities, must cross-reference each of the related applications, and must include a copy of the agreement to undertake the coordinated facility modifications. All applications must be filed on the same date. Any coordinated facility modification filing that proposes the cancellation of a community's sole noncommercial educational FM station license also must include a public interest justification. Dismissal of any one of the related applications as unacceptable will result in the dismissal of all the related applications.

* * * * *

Section 73.3571 is amended by revising subsections (a)(1) and (f) to read as follows:

§ 73.3571 Processing of AM broadcast station applications

(a) Applications for AM broadcast facilities are divided into three groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an AM station authorized under this part is any change in community of license or in frequency, except frequency changes to non-expanded band first, second or third adjacent channels. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed. All other changes will be considered minor.

* * * * *

(f) Applications for minor modifications for AM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The

rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

* * * * *

Section 73.3573 is amended by revising subsections (a)(1) and (e) to read as follows:

§ 73.3573 Processing FM broadcast station applications

(a) Applications for FM broadcast stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change for an FM station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.202(b)). A licensee or permittee may seek the higher or lower class adjacent channel, intermediate frequency or co-channel or the same class adjacent channel of its existing FM broadcast station authorization by filing a minor change application. Other requests for change in frequency or community of license for FM stations must first be submitted in the form of a petition for rule making to amend the Table of Allotments. Long-form applications submitted pursuant to § 73.5005 for a new FM broadcast service may propose a higher or lower class adjacent channel, intermediate frequency or co-channel. For reserved frequency noncommercial educational and Class D FM stations, a major change is any change in community of license, any change in frequency except changes to first, second or third adjacent channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. A major change in ownership is a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed.

* * * * *

(e) Applications for new reserved frequency noncommercial educational FM stations and for major modifications in the facilities of authorized reserved frequency noncommercial educational and Class D FM broadcast stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing applications which have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed. Applications for minor modifications for reserved frequency noncommercial educational and Class D FM broadcast stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day

will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

* * * * *

II. Part 74 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Section 74.1233 is amended by revising subsections (a)(1), (b) and (d)(1) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

(a) Applications for FM translator and booster stations are divided into two groups:

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is any change in frequency (output channel) except changes to first, second or third adjacent channels, or intermediate frequency channels, and any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. All other changes will be considered minor. All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

* * * * *

(b) Processing booster and reserved band FM translator applications.

(1) Applications for minor modifications for reserved band FM translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Conflicting applications received on the same day will be treated as simultaneously filed and mutually exclusive. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

(2) All other applications for booster stations and reserved band FM translator stations will be processed as nearly as possible in the order in which they are filed. Such applications will be placed in the processing line in numerical sequence, and will be drawn by the staff for study, the lowest file number first. In order that those applications which are entitled to be grouped for processing may be fixed prior to the time processing of the earliest filed application is begun, the FCC will periodically release a Public Notice listing reserved band applications that have been accepted for filing and announcing a date (not less than 30 days after publication) on which the listed applications will be considered available and ready for processing and by which all mutually exclusive applications and/or petitions to deny the listed applications must be filed.

* * * * *

(d) Processing non-reserved band FM translator applications.

(1) Applications for minor modifications for non-reserved band FM translator stations, as defined in paragraph (a)(2) of this section, may be filed at any time, unless restricted by the FCC, and will be processed on a "first come/first served" basis, with the first acceptable application cutting off the filing rights of subsequent, conflicting applicants. The FCC will periodically release a Public Notice listing those applications accepted for filing. Applications received on the same day will be treated as simultaneously filed and, if they are found to be mutually exclusive, must be resolved through settlement or technical amendment. Conflicting applications received after the filing of a first acceptable application will be grouped, according to filing date, behind the lead application in a queue. The priority rights of the lead applicant, against all other applicants, are determined by the date of filing, but the filing date for subsequent, conflicting applicants only reserves a place in the queue. The rights of an applicant in a queue ripen only upon a final determination that the lead applicant is unacceptable and if the queue member is reached and found acceptable. The queue will remain behind the lead applicant until a construction permit is finally granted, at which time the queue dissolves.

* * * * *